

Amendments to Senate Bill No. 251
1st Reading Copy

Requested by Senator Anders Blewett

For the Senate Judiciary Committee

Prepared by Todd Everts
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SENATE JUDICIARY
CLERK NO. 8
DATE 2/22/13
FILE NO. SB251

1. Page 12, line 21 through line 22.

Strike: subsection (3) in its entirety

Insert: "(3) a description of the action or inaction proposed, the material facts upon which the trustee has relied in making its decision regarding the proposed action or inaction, and an explanation of the reasons for the action or inaction;

(4) a statement that failure of a qualified beneficiary to object within the allowed time bars the qualified beneficiary from taking any legal action against the trustee for liability within the scope of [section 22] except as provided in [section 22(3)] and that a qualified beneficiary may want to seek independent legal advice regarding the matter at the qualified beneficiary's expense;

(5) the time within which objections to the proposed action or inaction can be made, which must be at least 30 days from providing the notice of proposed action or notice of proposed inaction;"

Renumber: subsequent subsection

2. Page 12, line 30.

Following: "inaction."

Insert: "The written objection may take any form reasonably calculated to communicate the objection but need not give any reason for the objection."

3. Page 13, line 1.

Strike: "A"

Insert: "Except as provided in subsection (3), a"

4. Page 13, line 3.

Strike: "If"

Insert: "Except as provided in subsection (3), if"

5. Page 13.

Following: line 6

Insert: "(3) The failure of a qualified beneficiary to object does not preclude the qualified beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) if the qualified beneficiary at the time of the qualified beneficiary's failure to object did not have notice of the proposed action as prescribed in [sections 19 through 23]; or
(b) if the qualified beneficiary's failure to object was induced by improper conduct of the trustee."

Renumber: subsequent subsections

6. Page 13, line 9.

Strike: "a qualified beneficiary objecting to the proposed action"

Insert: "the trustee"

7. Page 13, line 10.

Strike: "not"

8. Page 13, line 19.

Strike: "a qualified beneficiary objecting to the proposed inaction"

Insert: "the trustee"

9. Page 13, line 20.

Following: "should"

Insert: "not"

10. Page 15, line 7 through line 11.

Strike: subsections (2) and (3) in their entirety

Insert: "(2) Unless specifically provided to the contrary in [sections 1 through 132] or unless inconsistent with [sections 1 through 132], the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern proceedings under [sections 1 through 132]."

11. Page 51, line 16 through line 17.

Strike: subsection (a) in its entirety

Insert: "(a) any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest;"

12. Page 51, line 18.

Following: "breach"

Insert: "of trust, with interest; or

(c) any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust"

13. Page 51, line 22.

Following: "indifference to the"

Insert: "fiduciary duties of the trustee, the terms or"

Following: "purposes of the trust"

Insert: ", "

14. Page 51, line 25.

Insert: "(3) If the trustee is liable for interest pursuant to this section, interest must be determined as the greater of the following amounts:

(a) the amount of interest that accrues at the legal rate on judgments; or

(b) the amount of interest the trustee actually received as a result of the breach of trust."

15. Page 53, line 2.

Following: "to the"

Insert: "fiduciary duties of the trustee, the terms or"

Following: "the trust"

Insert: ", "

Following: "beneficiaries;"

Strike: "or"

16. Page 53, line 4.

Following: "settlor"

Insert: "; or

(c) relieves the trustee of accountability for profits derived from a breach of trust"

17. Page 53, line 6.

Following: "circumstances"

Strike: "and"

Insert: ", "

18. Page 53, line 7.

Following: "settlor"

Insert: ", and that the settlor was represented by independent legal counsel before adopting the exculpatory term."

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